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No. 84-512

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

DeHAVILLAND AIRCRAFT OF CANADA, LTD.,
Petitioner,

vs.

CRISPIN MAUNDER and SAMUEL J. BETAR, Public Administrator of Cook County, Administrator of the Estate of RAGHUBIR DUTT LAW, Deceased,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

RESPONDENTS' BRIEF IN OPPOSITION

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COUNTER QUESTION PRESENTED

May not Illinois, consistent with the due process clause, exercise personal jurisdiction over a foreign corporation where that corporation advertises in Illinois, sells its products in Illinois and makes a profit thereon, seeks financing in Illinois for its products, conducts regular and daily business-related phone calls to its wholly-owned Illinois subsidiary, guarantees its subsidiary's lease, and arranges for its Illinois subsidiary's banking affiliation?

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TO: The Chief Justice and Associates Justices of the Supreme Court of the United States:

The respondents, Crispin Maunder and Samuel Betar, Public Administrator of Cook County, Administrator of the Estate of Raghubir Dutt Law, plaintiffs herein, respectfully request that a writ of *certiorari* not issue to review the judgment and opinion of the Supreme Court of Illinois, entered in this case on June 29, 1984.

COUNTER STATEMENT OF THE CASE

Contrary to the impression DeHavilland (hereinafter "Limited") attempts to create, Limited is no stranger to Illinois. Limited advertises the airplanes it manufactures in trade jour-

nals throughout the United States, including Illinois.[1] (Appendix A). Limited sells its airplanes in Illinois; it advertises spare parts for its planes in Illinois. And it makes a profit from its Illinois sales. Accordingly, the Supreme Court of Illinois correctly ruled that Limited does business in Illinois, and is thus amenable to service of process in the state.

Prior to June, 1968, Limited provided parts and service for its aircraft only at its manufacturing site in Downsview, Ontario, Canada. (Betar R.C239). However, in 1968, Limited established a subsidiary corporation, DeHavilland of Canada, Inc. (hereinafter. "Inc."), in Rosemont, Illinois. (Betar R. C263-267). Since then, Illinois has been one of only three parts depots for Limited's aircraft in the entire world; the other two being Downsview, Ontario and Nairobi, Kenya. (See Appendix B). Limited sells spare parts to Inc., and turns a profit on these sales. (Betar R.C440). Limited also states in its advertisements, which appear in trade journals throughout the United States, that *service* as well as spare parts for its aircraft is available through Inc., in Rosemont, Illinois. (See Appendix B). Finally, Limited has sought financing for its aircraft sales from financial institutions in Chicago. (Betar R. C328-329, 336).

Inc.'s manual, which describes its relationship to Limited, states "the Company is controlled by the Parent Company *and will operate under the authority of the Vice President [of] Sales.* The function of this Company is *to provide Product Support* to American users of the Parent Company's products." (Appendix C) (Emphasis added).

Additional facts demonstrating the relationship between Limited and Inc. and the contacts between Limited and Illinois are:

a) Limited started Inc. without funds. (Betar R. C255-256, 257-259);

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[1] At the end of 1981, 885 aircraft manufactured by DeHavilland were registered in the United States, including Illinois. Federal Aviation Administration, *Census of U.S. Civil Aircraft Calendar Year 1981, p. A27, A160.*

b) Limited decided on the Illinois banking affiliate for Inc. (Betar R. C257-258); and

c) Limited refers to Inc. all orders it receives from the U.S. for DeHavilland aircraft parts. (Betar R. C281-282).

Inc. started with $100,000.00 worth of parts shipped from Ltd., on open account. (Betar R.C263-267). For the first six months of Inc.'s operation, Inc. paid Limited for these parts only out of sales receipts. (Betar R.C293). It was not until 1974 that Inc. started to pay Limited for parts 30 to 60 days from invoice. (Betar R. C293).

Also, Limited guaranteed the lease for Inc.'s premises in Rosemont, Illinois. (Betar R. C175-179). This guarantee expressly provides that it ". . . shall be a continuing guarantee and the liability of the guarantor hereunder shall in no way be affected, modified or diminished by reason of any . . . renewal . . . or extension of the lease." (Betar R. C177-178). Limited gave this guarantee without any charge to Inc. (Betar R. C208). And the guarantee is still in force. (Betar R. C214-218).

The extent of the daily activity in Illinois between Limited and Inc. is apparent from their telephone communications. In the period from 1972 to 1977, there were 2,696 calls made by Inc. to Limited. In the seven months from August of 1980, through February of 1981, 1,267 calls were made from Inc. to Limited. See plaintiff Group Exhibits A & B (Betar R. C720-1136), and the summaries thereof in Exhibits A1 and B1. (Betar R. C1145-1158).

There are no written agreements between Limited and Inc. (Betar R. C287). Limited pays the salaries of Inc.'s officers. (Betar R. C387-388, 407-408). And Inc. has never declared a dividend. (Betar R. C277).

Finally, Inc.'s organizational chart shows it to be controlled by Limited. (Appendix D). The officers of Inc., with the exception of its "assistant secretary" (an Illinois lawyer), are also the officers of Limited. (Betar R. C352-353, 378-379).

REASONS FOR DENYING THE WRIT

THE ILLINOIS SUPREME COURT PROPERLY HELD, CONSISTENT WITH DUE PROCESS, THAT LIMITED'S OWN BUSINESS ACTIVITIES IN ILLINOIS SUBJECT IT TO PERSONAL JURISDICTION THERE.

A. THE DECISION OF THE ILLINOIS SUPREME COURT IS CONSISTENT WITH THE DECISIONS OF THIS COURT.

Over the years, this Court has developed various tests designed to deal with the amenability of foreign corporations to state personal jurisdiction. Plaintiffs contend that whatever the test used, the contacts between Limited and the State of Illinois amply support the Illinois Supreme Court's decision in this case that Illinois courts have personal jurisdiction over Limited.

This Court's test for such personal jurisdiction over foreign corporations, while initially focusing on consent and presence, dramatically changed in 1945 with *International Shoe Co.* v. *Washington,* 326 U.S. 310 (1945). There, this Court emphasized the fundamental fairness underlying due process and inquired into minimum contacts. More recently, this Court has put the matter in terms of an inquiry into the relationship among the defendant, the forum and the litigation; and whether it was reasonable for the foreign corporation to expect to be haled into court in the forum state. *World-Wide Volkswagen Corp.* v. *Woodson,* 444 U.S. 286 (1980). Under all of these approaches, Limited was properly before the Illinois courts, as the Illinois Supreme Court found.

Limited has sufficient contacts with Illinois. As set out in the Counter Statement of the Case, Limited advertises in Illinois as it does in other states; it sells its products in Illinois and makes a profit therefrom; it makes and receives regular and daily phone calls to Inc., its wholly owned Illinois subsidiary; it sought financing in Illinois; and it arranged its wholly owned

Illinois subsidiary's banking affiliation. These contacts are more than sufficient to find that Limited was properly subject to personal jurisdiction in Illinois courts.

Perkins v. *Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), is a case in point. There, like this case, the plaintiff was a non-resident of Ohio, the cause of action did not accrue in Ohio nor did it relate to the defendant corporation's activities there. Nevertheless, even though it owned no mining properties in Ohio, the defendant mining corporation was subject to personal jurisdiction in Ohio because of its president's temporary activities there. He carried on correspondence relating to the business, drew and distributed paychecks, maintained bank accounts, held meetings and, overall, engaged in "continuous and systematic supervision" in discharging his duties as president and general manager. Limited's contacts with Illinois are even stronger than those of the mining corporation president with Ohio, because here, Limited's contacts go well beyond those of a particular individual and are in no sense temporary.

It is instructive to compare this case with *World Wide Volkswagen Corp.* v. *Woodson, supra,* where this Court found that non-resident corporate defendants carried on no activities whatever in the forum state, Oklahoma, sufficient to subject them to personal jurisdiction there. This Court first emphasized the relationship between technological progress and the flow of commerce between the states. It then noted that the non-resident plaintiffs there sought to premise personal jurisdiction on one solitary occurrence. This Court said:

> "We find in the record before us a total absence of those affiliating circumstances that are a necessary predicate to the exercise of state-court jurisdiction. *Petitioners carry on no activity whatsoever in Oklahoma.* They close no sales and perform no services there. They avail themselves of none of the privileges and benefits of Oklahoma law. *They solicit no business there either through sales persons or through advertising reasonably calculated to reach the State.* Nor does the record show that they regularly sell

> cars at wholesale or retail to Oklahoma customers or residents or that *they indirectly through others serve or seek to serve the Oklahoma market.* In short, respondents seek to base jurisdiction on one, isolated occurrence and whatever inferences can be drawn therefrom: the fortuitous circumstance that a single Audi automobile, sold in New York to New York residents, happened to suffer an accident while passing through Oklahoma." 444 U.S. at ..... (Emphasis added.)

In contrast, in this case, Limited carried on numerous activities in its own right in Illinois. Limited actively sought to enter the Illinois market and in fact did so. Limited sells its planes and parts in Illinois and directly serves the Illinois market. Hence, plaintiffs do not base personal jurisdiction on an isolated occurrence at all. Rather, as this Court stated in *World-Wide Volkswagen,* what is crucial is "that defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there." Observe that Limited nowhere asserts that it would be unfair to subject it to suit in Illinois, and it is *fairness* that is the essence of due process and personal jurisdiction over non-resident corporations.

Plaintiffs must emphasize that it is Limited's own activities that are of concern. Plaintiffs do not argue that Inc.'s activities as a corporate entity are to be attributed to Limited simply because of the parent-subsidiary relationship. Limited is therefore simply in error when it states at p. 17 of its Brief that the Illinois Supreme Court's decision means that a parent can be sued in every state where its subsidiary is located. Whether a parent can be sued in any state depends on the parent's own activities in that state. Ample evidence of that exists here.

The Illinois Supreme Court's decision is, moreover, consistent with this Court's decision in *Helicopteros Nationales de Columbia* v. *Hall,* 104 S.Ct. 1868 (1984). Unlike this case,

there was no contact in *Helicopteros* between the forum state and the foreign corporation of a continuous and systematic nature.

This Court cannot possibly review—nor should it—every state court decision upholding the assertion of personal jurisdiction over non-resident corporations. Whether due process has been satisfied is a complex determination resting in large measure on the particular fact pattern. The facts in this case fall well within due process boundaries set out in this Court's decisions.

B. THE DECISION OF THE ILLINOIS SUPREME COURT DOES NOT RAISE A *CANNON* ISSUE.

Limited strains mightily to create a conflict between the Illinois Supreme Court's decision and this Court's 1925 decision in *Cannon Mfg. Co.* v. *Cudahay Packing Co.* 267 U.S. 333 (1925). But there is none. The Illinois Supreme Court did not at all reject *Cannon.* Rather, in following *Cannon,* it said: "Even an expansive reading of *Cannon* does not justify the conclusion that a parent corporation can never be subject to the jurisdiction of a state where a subsidiary is located." *Maunder* v. *DeHavilland Aircraft,* 102 Ill. 2d 342. 353 (1984).

It is crucial to recognize what *Cannon* did and did not hold. Specifically, it held that where formal separateness is maintained, the activities of a subsidiary corporation in the forum state do not automatically subject the non-resident parent corporation to personal jurisdiction. With this the plaintiffs here have no quarrel whatever. As amply demonstrated by the Counter Statement of the Case and Argument A, it is the activities in Illinois of Limited itself which are at issue here. This is supported by the Illinois Supreme Court's own decision which did not adopt an alter ego argument. Compare the specially concurring opinion of Justice Simon.

Consequently, the facts and decision in this case do not raise a *Cannon* issue at all. Limited is simply trying to manufacture one.

C. THERE IS NO MEANINGFUL CONFLICT IN THE CIRCUITS REGARDING THIS COURT'S *CANNON* DECISION.

Closely related to Limited's attempt to create a *certiorari* issue regarding *Cannon* is its assertion that there is a conflict among the circuits regarding *Cannon*. First and foremost, as contended in Argument B and supported by the Illinois Supreme Court's decision, no *Cannon* issue is in fact raised by this case. Second, this is a *state* court decision, yet Limited speaks in its Brief about a conflict among the *circuits*. A state court decision is not the proper vehicle for resolving a so-called conflict among circuits.

Finally, and contrary to Limited's contention, there is in reality no conflict among the circuits. In its Brief, Limited concedes that the First, Fourth and Fifth Circuits have followed *Cannon* in those situations where the issue solely is one of ownership of a subsidiary corporation. But then Limited goes on to argue that the Second and Ninth Circuits take a contrary view. With all due respect, this is just not so. For example, in *Boryk* v. *DeHavilland Aircraft Co.* 341 F.2d 666 (2d Cir. 1965), the Court specifically followed *Cannon* in stating that mere ownership of a forum state subsidiary is not enough to subject a foreign parent corporation to personal jurisdiction.[2] But it found DeHavilland subject to state court jurisdiction on the facts of that case. Similarly, the Ninth Circuit in *Wells Fargo & Co.* v. *Wells Fargo Express Co.*, 556 F.2d 406 (9th Cir. 1977), does not criticize *Cannon* but states that where ownership alone is the issue, then *Cannon* controls.[3] In light of these holdings,

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[2] This is not the same DeHavilland as is involved here.

[3] The Wells Fargo Court also found jurisdiction on the facts of that case. It did not reject Cannon.

plaintiffs do not understand how Limited can argue that there is a conflict among the circuits.

Limited's recognition of the weakness of its own argument is evident by the decisions it relies on. For example, Limited quotes from the decision in *Energy Reserves Group Inc.* v. *Superior Oil Co.* 460 F.Sup.483 (D. Kansas 1978). Needless to say, a District Court's criticism in *dicta* of a Supreme Court decision does not give rise to a conflict among the circuits. Indeed, the fact that Limited places emphasis on *Energy Reserves Group, Inc.*, makes obvious that it could find no circuit court decisions which assert that *Cannon* is no longer to be followed.

By way of summary on this issue, therefore, plaintiffs maintain that there is no conflict among the circuits. All agree that *Cannon* applies where the issue is ownership standing alone. But again, plaintiffs must make absolutely clear that this case does not raise the issue of the applicability of *Cannon* to a fact situation involving ownership alone.

Limited's argument is misplaced.

CONCLUSION

This Court should deny Limited's Petition for Writ of Certiorari. First, the Illinois Supreme Court's decision follows and is consistent with this Court's personal jurisdiction case law. Second, this case does not raise a *Cannon* issue at all. Limited was found subject to the personal jurisdiction of Illinois courts because of its own activities in Illinois, and not through its ownership of the stock of Inc., its Illinois subsidiary. Third, there is no conflict among the circuits on *Cannon*. *Cannon* is still good law where ownership by a parent corporation of a subsidiary is the basis for personal jurisdiction. Even if this Court were to consider such an issue to be worthy of *certiorari*, this case is not an appropriate vehicle to deal with it.

Respectfully Submitted,

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LEONARD M. RING

APPENDIX

APPENDIX A

How to carry 3 million passengers an average of 42 miles each. And make it pay.

Golden West makes short-haul profitable flying de Havilland Twin Otters.

"They are just perfect for our type of operation," reports Dennis J. Crabtree, Vice President of Operations for Golden West Airlines.

In the last 10 years, Golden West has flown over 168,400,000 passenger miles, making it the largest commuter airline in the U.S.A. Their 12 Twin Otters have made an astonishing 1,387,000 landings. Flight segments as short as 15 minutes link Los Angeles with 250 local communities daily.

This rigorous schedule means Golden West aircraft are almost continuously in the air. Yet de Havilland Twin Otter proves 99.9% reliable. Rugged airframe and simple systems keep maintenance to a minimum. Quiet turboprops with TBOs of over 3,000 hours conserve fuel, and reverse to shorten landings and extend brake life.

Golden West President James M. Harmon sums up his passengers' satisfaction with Twin Otter: "They know they can depend on its comfort, convenience and on-time reliability." And to short haul operators, that's pure gold.

The de Havilland Aircraft of Canada, Limited
Downsview, Ontario, M3K 1Y5
Telephone: (416) 633-7310
Telex: 0622123. Cable: MOTHTOR, Toronto

DE HAVILLAND **Twin Otter**

The standard of dependability and versatility around the world.

Twin Otter service enquiries welcome from operators in countries not served by de Havilland Canada Inc.
5332 Dorset Road, Scarborough, Ontario M1H 2X4. Telephone: (416) 438-4788. Telex: 06-22123

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APPENDIX B

LIMITED'S PARTS CATALOG

Limited prints and distributes an "Illustrated Parts Catalog". The introductory paragraph thereof states that the catalog's purpose is "to assist stock, maintenance and field repair personnel to identify and order procurable parts for the DHC-6 Twin Otter aircraft, manufactured by the DeHavilland Aircraft (Company) of Canada Limited, Downsview, Ontario". (Betar R. C180).

The introduction to the catalog (Betar R. C180-181), reads in relevant part:

INTRODUCTION

Part I

1-5. HOW TO ORDER PARTS

(1) All orders for parts and requests for quotations should directed to the DeHavilland Canada Product Support Depot nearest your location.

Addresses are as follows:

(a) The De Havilland Aircraft of Canada, Ltd.
Garratt Boulevard,
Downsview, Ontario, M3K 1Y5.
Attention—Spare Parts Dept.
(Area Code 416) 633-7310
Telex: 06-22128
Cable: MOTH—Toronto.

(b) Field Service and Parts Depot
DE HAVILLAND CANADA, INC.
5321 North Pearl Street
Rosemont, Illinois 60018, U.S.A.
(Area Code 312) 678-8380,—8381.

(c) Field Service and Parts Depot
East African Airways
P.O. Box 19002
Nairobi, Kenya
Cable: AIRSERVICE—Nairobi, Kenya

APPENDIX C

DeHavilland Aircraft of Canada has incorporated a subsidiary company in the United States of America.

The Registered name and address of this Company is:

DEHAVILLAND CANADA, INC.
5321 North Pearl Street
Rosemont, Illinois 60018

The Company is controlled by the Parent Company *and will operate under the authority of the Vice President [of] Sales.* The function of this Company is *to provide Product Support* to American users of the Parent Company's products.

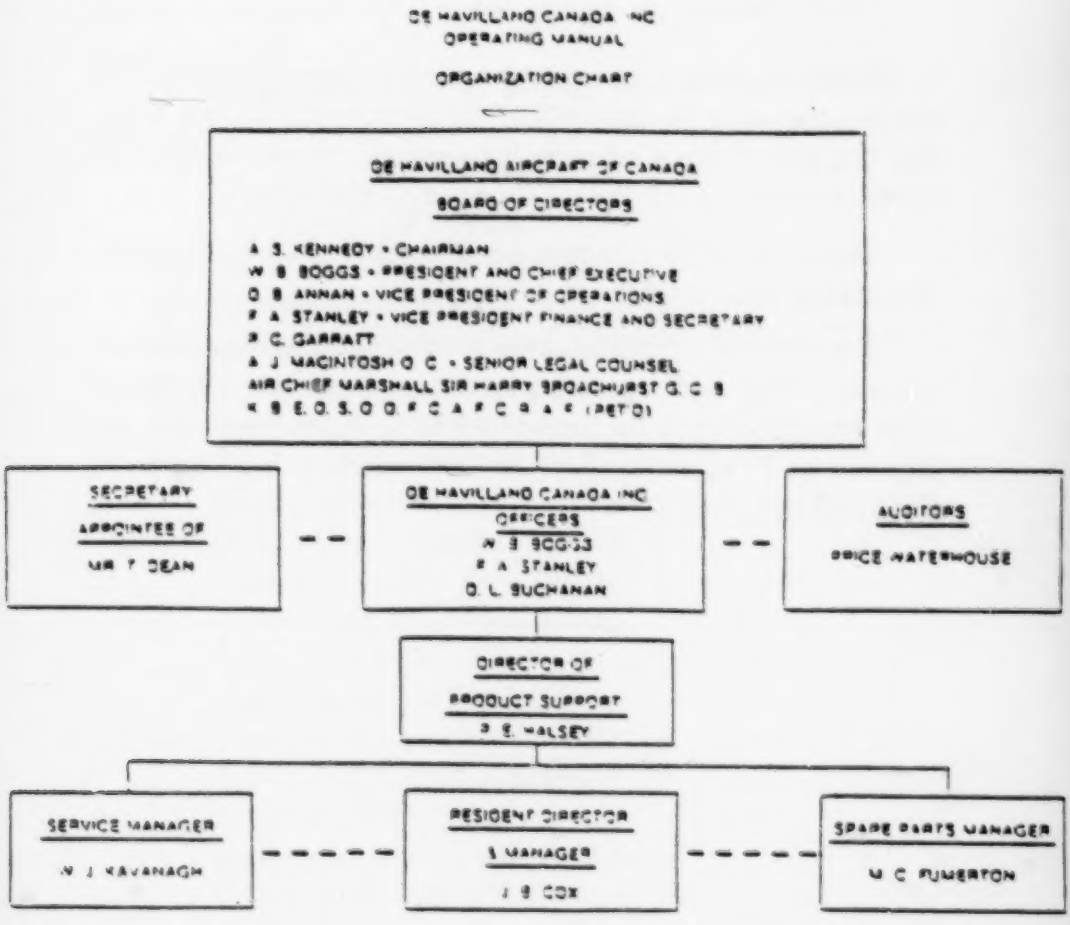
The scope of its activities are limited to the United States of America and its Offshore Possessions.

The purpose of this manual is to define the organization, responsibilities and operating procedures of the Company. Each procedure is to be considered as an *instruction* from the Director of Product Support for implementation. (Betar R. C186) (Emphasis added).

APPENDIX D

ORGANIZATIONAL CHART OF INC.

The organizational chart from the De Havilland Canada, Inc. operating manual, reads (Betar R. C185):


DE HAVILLAND CANADA INC
OPERATING MANUAL
ORGANIZATION CHART
DE HAVILLAND AIRCRAFT OF CANADA
BOARD OF DIRECTORS
A S. KENNEDY - CHAIRMAN
W B BOGGS - PRESIDENT AND CHIEF EXECUTIVE
O B ANNAN - VICE PRESIDENT OF OPERATIONS
F A STANLEY - VICE PRESIDENT FINANCE AND SECRETARY
J C. GARRATT
A J MACINTOSH Q C - SENIOR LEGAL COUNSEL
AIR CHIEF MARSHALL SIR HARRY BROACHURST G. C B
K B E. D S. O D F C A F C R A F (RET'D)
SECRETARY
APPOINTEE OF
MR F DEAN
DE HAVILLAND CANADA INC
OFFICERS
W B BOGGS
F A STANLEY
O L. BUCHANAN
AUDITORS
PRICE WATERHOUSE
DIRECTOR OF
PRODUCT SUPPORT
J E. HALSEY
SERVICE MANAGER
W J KAVANAGH
RESIDENT DIRECTOR
& MANAGER
J E COX
SPARE PARTS MANAGER
M C FUMERTON

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